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Colorado General Assembly

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MEMORANDUM

TO: Mary Henry and Andrew O'Connor

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 5, 2017

SUBJECT: Proposed initiative measure 2017-2018 #20 concerning the taxation of oil and gas production

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To raise the oil and gas severance tax rates by 5% for the current taxable year;
2. For tax years that begin on and after January 1, 2018, to make the following changes to the oil and gas severance tax:

- a. Exempt gross income that is less than \$300,000 from the tax;
 - b. For gross income that is \$300,000 and over, increase the tax rate from 5% to 10%;
 - c. Halve the production amounts that qualify for the stripper well exemption; and
 - d. Eliminate the credit allowed against the severance tax for property taxes paid;
3. To modify the allocation of the oil and gas severance tax and require a portion of the revenues to be used for additional, new purposes; and
4. To create two new programs: Colorado promise scholarships for students attending state colleges and universities and a program to provide medical care and treatment for people suffering negative health impacts caused by oil and gas production in those communities impacted by oil and gas production.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The following questions relate to the legislative declaration in section 1 of the proposed initiative:
 - a. What is the purpose of the declaration? Does it have any legal effect?
 - b. Are you attempting to establish minimum amounts of funding for public education and higher education by stating that the revenue should supplement and not supplant existing funding? To the extent possible, should it be used to supplement?
 - c. If it is determined that existing programs receive less revenue than they would have without the proposed initiative, then, based on the second sentence of the legislative declaration, must the General Assembly decrease the amount that is allocated to the severance tax stabilization trust fund and increase the amounts to the existing cash funds?

3. The following questions relate to the existing severance tax on oil and gas in section 39-29-105 (1)(b):
 - a. The tax that is levied under this provision will apply for tax years that begin prior to January 1, 2018. Is that correct?
 - b. Though the change was not shown, the rates that correspond to certain levels of production have all been increased by 5%. Is it your intention to change the rates for the 2017 tax year only?
 - c. If voters approve the measure in November 2017 and it becomes effective after January 1, 2018, then would the change be retrospectively changing the taxes for 2017?
4. The following questions relate to the new severance tax on oil and gas set forth in section 39-29-105 (1)(c)?
 - a. Is this the provision that creates the oil and gas severance tax for taxable years beginning on and after January 1, 2018?
 - b. The only tax rate is 10% for gross income of \$300,000 or more. If a taxpayer has less than that amount of gross income for a year, then is the income exempt?
 - c. The exemptions based on minimum amounts of production, or stripper well exemptions as they are known, appear to be reduced by 50%. Is the reduction the only change to this exemption?
5. The tax credit for property taxes paid in section 39-29-105 (2)(b) specifically applies to the tax levied in accordance with section 39-29-105 (1)(b). Therefore, was it your intention that there will be no credit allowed against the taxes paid on the oil and gas severance tax for any taxable years beginning January 1, 2018?
6. With respect to section 39-29-105 (3), which of the following do you intend if the voters approve the proposed initiative:
 - a. The state may retain all of the oil and gas severance tax revenue that is collected for tax years after January 1, 2018, as a voter-approved revenue change to the fiscal year spending limit in section 20 (7) of article X of the state constitution (TABOR); or

- b. The state may retain the increased revenue that results from the changes to the oil and gas severance tax in the initiative as a voter-approved revenue change?
- 7. If the second option is the answer to the previous question, will the state be able to actually calculate the amount of revenue that it retains as a result of the change?
- 8. Can the voters from the state, which is one district for purposes of TABOR, approve a voter-approved revenue change for other districts?
- 9. Do you intend for all oil and gas severance tax revenue collected for tax years beginning on and after January 1, 2018, be distributed under section 39-29-108 (2.3)?
- 10. Based on the legislative declaration, is it your intent that the 22% allocations to the local government severance tax fund and the severance tax trust fund would approximate the amounts that would have been credited to those funds if the oil and gas severance tax was not changed by the initiative?
- 11. Is it your intent that the General Assembly not change the allocation set forth in section 39-29-108 (2.3)?
- 12. Does the limit on the 125% of revenue in the perpetual base account apply beginning in the second fiscal year? And if so, what year is that fiscal year?
- 13. Is there any circumstance that you intend the corpus of the perpetual base account to be used?
- 14. For the distribution under section 39-29-110.5 (2)(I), is the General Assembly required to first distribute the money for full-day kindergarten, and then use any of the remaining 30% for the state's share of school finance? Do you intend for charter schools to be eligible for the distribution under 39-29-110.5 (2)(I)?
- 15. Who is the money to be appropriated to under section 39-29-110.5 (2)(II)? What commission is required to establish the academic criteria? Is this commission likewise required to administer the program?
- 16. Is the department of public health referred to in the proposed initiative an abbreviation for the department of public health and environment (CDPHE)?
- 17. Do you expect CDPHE to provide health care or pay for some portion of the treatment?

18. Are the negative health impacts proximately caused by oil and gas production well documented so that CDPHE will be able to administer this program? The measure describes increases in asthma, cancer, immune system diseases, cognitive deficiencies, miscarriages, and birth defects. Do you intend CDPHE to provide medical care for these conditions generally or limit funding to increases in these conditions?
19. The clean energy fund created in section 24-75-1201 has been repealed. What should happen to the 10% that was supposed to be allocated to that fund?
20. CDPHE currently administers a grant program for public water systems and domestic wastewater treatment works under section 25-1.5-208. Is it your intent that the 10% identified in section 39-29-110.5 (2)(V) be distributed under that program? If so, could this portion of the revenue simply be transferred to the small communities water and wastewater grant fund created in section 25-1.5-208 (4)(a)?
21. Section 6 of the proposed initiative amends section 24-75-1201 (1)(a). This C.R.S. section was repealed in 2013. There is a similar existing section to the repealed section, which is section 24-38.5-102.4 (1)(a)(I). Does the proponent wish to amend this existing section?
22. Under section 1-40-105.5, Colorado Revised Statutes, the Director of Research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the Director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to use SMALL CAPITAL LETTERS to show language being added and ~~stricken-type~~ to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed, in the following format:

"In Colorado Revised Statutes, 39-29-101, **add** (4) as follows:"

"In Colorado Revised Statutes, **add** 39-29-110.5 as follows:"

"In Colorado Revised Statutes, 39-29-108, **amend** (1) introductory portion and (2); and **add** (2.3) as follows:"

3. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

For instance, please see 39-29-110.5 (2) of the proposed initiative.

4. Please correct the following misspelled words within the proposed initiative: "COLECTED", "ADDIDTION", "PROVOSIONS", "TYHIS", "PAOID", "ETABLISHING", "ESTABLISDH", "TYHEREON", "PREV IOUS", and "LERSS".
5. Please capitalize the first word in every sentence.
6. On page 5 of the proposed initiative, in section 39-29-110.5 (2)(II), there are two references to "local district colleges" within the same sentence. Is this a duplication error? In addition, the internal citations (23-72-121.5 and 23-72-212.5) for these terms are incorrect as there is no current statute with that numbering.
7. It is standard drafting practice to avoid using archaic terms. For example, in section 39-29-110.5 (1)(a), instead of using "THEREIN", use "IN THE FUND".